

**تقسيم المعمورة
في الفقه الإسلامي
وأثره في الواقع**

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"jihad: a holy war undertaken by Muslims against unbelievers"

The Concise Oxford Dictionary, Ninth Edition, p. 730.

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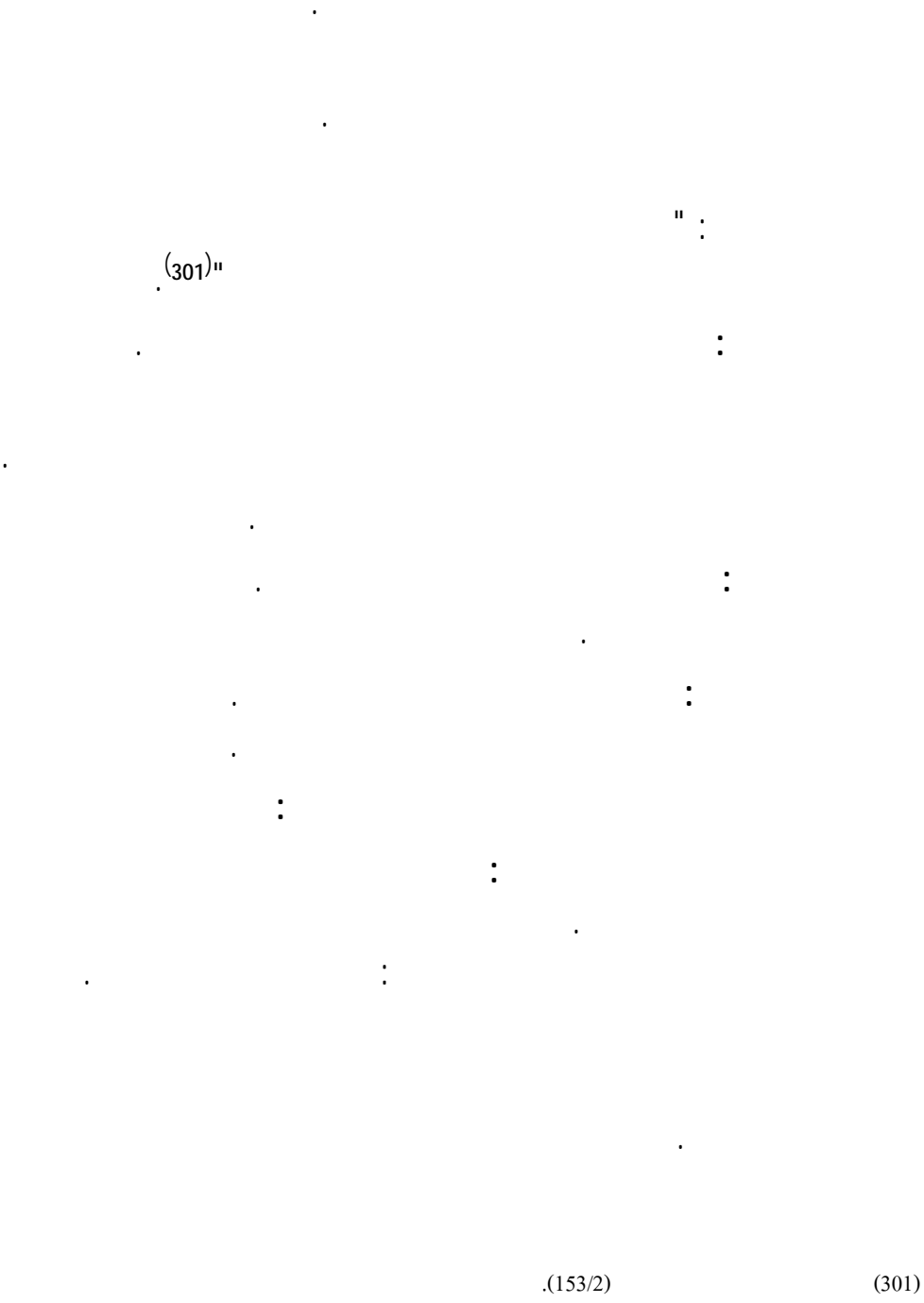
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since all citizens are granted equal civil rights. These, invariably, include the right for personal religious practice, freedom to put it forward and promote its message. Moreover, there is an opportunity to demand additional civil rights such as those applied in relation to family law. Also granted, is the entitlement of political participation which is the key to the establishment of justice, the spread of virtue and the development of the state.

Despite the above, such (non-Muslim) states cannot be classed as “*Land of Islam*” without qualification, due to the fact that the majority of its inhabitants are not Muslim and that the governing system is not based on religion. However, they can be classed as “*Land of Justice*” since they enshrine the dignity and freedom of the individual.

Notwithstanding, statements expressed by some leading scholars of Islam have permitted the classification of territories where a Muslim is in the minority as Islamic.

Finally, I pray that Allah makes this research beneficial and corrective in these times that are characterised by confusion. Parts of the Islamic heritage have been exploited to such an extent that matters which are prohibited have been infringed and innocent people have been assaulted. This erroneous use of Islamic tradition has led to people being driven away from this religion.

I further pray to Allah to facilitate for this study to be an appealing message that attracts people to Islam informing them that it is a religion of both conciliation and peace, and a religion that advocates collaboration on the good and moral and the abandoning of sin and aggression. I pray that He makes it, also, a barrier against attacks from opponents who employ lies and deception and take advantage of the opinions of the foolish for their ends.

Glory be to God and praise be to Him. There is no Deity but Him. From Him we seek forgiveness and to Him we repent.

Translated by
Ammar Aldougman

tradition, it is not binding, as it was merely a depiction of contemporary political affairs.

2- All the definitions given by jurists in relation to types of territory were points of view that were subject to the jurists' own deliberations. That is why jurists differed in opinion. Accordingly, they cannot be used to counter definitive Islamic tenets e.g. regarding a recognised Islamic position as un-Islamic, or permitting something that is obviously forbidden.

3- Traditional classification of territory is not valid in today's world. Therefore, traditional associated notions cannot be applied. This is because international relations have shifted such that they are now based on international law which is binding and is founded on the basis of maintaining peace not war.

4- In assessing the current Islamic situation the following is realised: the Muslim nation, in the form of aggregate states, has entered into peace agreements with states that had in the past been under the realm of "*Land of War*". These agreements have converted the tag of "war" into one of either "treaty" or "peace". Accordingly, these states are either "realms of treaty" or "realms of peace".

5- Muslim Jurists are agreed that an "Treaty of Peace" implies the prohibition of the following: waging war, treason, violation of life, violation of property and the violation of chastity. Such an agreement dictates absolute mutual security.

6- Differences of opinion among jurists in terms of secondary rulings which have been based on the type of territory are not relevant to today's world. This would be either due to internationally binding agreements or due to change in the composition of populations and the intermingling of peoples and nations. On this basis, Islamic decrees do not vary because of a change of location. Indeed, they are mandatory for all Muslims, so long as they are aware of and are able to perform them.

7- Factors relating to stability and security were important in establishing the type of Land. Thus, in today's state of affairs, the command to migrate (*Hijra*) and the prohibition of residing in non-Muslim territory are not relevant. Prohibition has only been retained for those fearing engagement in sinful deeds and this is, clearly, not an issue of type of Land.

8- The nature of citizenship entitlement in international law has given Muslims additional emancipation outside the traditional "*Land of Islam*"

Second: Temporary Attachment: this is the granting of the right of residence for a set period. This used to be known as “The Treaty of Temporary [Assurance of] Security”. The involved individual would be known as the “one who pledges to peacefulness”. In today’s convention, this is equivalent to the “resident” or “non-citizen”. The differences between the two systems are procedural and they are subject to jurists’ deliberations.

7- The contemporary citizenship model with its emphasis on loyalty to the motherland is not against Islamic Law. Loyalty to a motherland is accepted in Islam because it is in conformity with the nature of man. Thus, citizenship does not run counter to religion.

8- What is expected by virtue of loyalty to a motherland in terms of working towards its advancement, development and defence is lawful and, indeed, an obligation. Conversely, working towards its corruption and harm is unlawful and is forbidden. Islamic Law, at its core, commands the preservation of life, family and wealth.

9- The universality of Islam requires the utilisation of peace, security and any legislation that guarantees freedoms and human rights -which are afforded by the contemporary system- for good purposes. God has commanded the use of wisdom, kind words and gentle reasoning in order to promote decency, spread the message of goodness, and direct people to what is required of them in terms of knowing their Lord.

10- In surveying the reality of the world today it is evident that the message of Islam has reached all frontiers because of the diaspora of Muslims. The endeavours of Muslim communities across the world to preserve their faith and, indeed, invite others to it, and all the associated deeds such as building mosques and centres are all precursors to the triumph of this faith.

Study Findings

The summary to the chapters above indicate the direction of these findings and they are evident for the discerning reader. The most significant findings are presented below:

1- The historic classification of the world into *Land of Islam* and *Land of War*, or using other analogous expressions, is not part of sacred text; they are open to revision. Despite receiving this classification from accepted

essence of their relationship is based on “the land is God’s land, and the servants are God’s servants”.

2- The separation of people into nations, tribes and states is for the purpose of getting to know one another. This difference is based on the provision of variety, not conflict.

3- In order for people to get to know one another relationships must be made on the basis of peace, safety, friendship and collaboration; not on war, conflict and animosity. Moreover, any legitimate deed based on this principle is consistent with the religion of Islam.

4- The “*Land of War*” label is not justified for any country that enters into a peace agreement with Muslims.

5- Current international agreements are legitimate in principle; they cannot be described otherwise without strong evidence. The following rulings are associated with international agreements:

I. International agreements cannot be entered into by anyone except a ruling Muslim authority. Individuals or groups cannot be authorised to do so. This ruling remains valid in today’s world order.

II. When entering into an international agreement, the interests of the state or the nation must be taken into consideration, and a net legitimate benefit must be realisable. Thus if the agreement brings harm to the nation or is based on unfairness and exploitation then it is invalid and has no sanctity.

III. If an agreement has been entered into, and it is unlawful because of terms that are evidently harmful or because if its signatories are seen to be incompetent, then it is not lawful to breach it except by notification from a recognised authority e.g. the ruler or his deputy. Such agreements cannot be revoked by individuals. .

6 – The attachment to a state according to both Islamic and the modern system is of two forms:

First: Permanent Attachment: this attachment by individuals to a state is represented by citizenship. In modern legal usage, this symbolises the belonging to a state. This would be the same in an Islamic system. However, its entitlement under an Islamic system used to be based on either faith or on the *Permanent [Assurance of] Security Treaty* (for non-Muslims), whereas its modern day entitlement is based on factors not including religion.

Chapter Four: The Modern State and the Classification of Territory

Conclusion:

1- The political concept of the “nation state” is new and was not known at the time of classifying territories into two types.

2- The classification of contemporary states which have replaced the historic Muslim state is disputed. However, the strongest opinion is that it retains the label *Islamic*. Since its Islamic character was acquired with overwhelming evidence, this cannot be taken away except with overwhelming evidence.

3- There are numerous Muslim states in today’s world. If relations between them were based on peace and cooperation then having multiple leaders is not sufficient grounds for their denunciation. However, the endeavour towards uniting their visions and policies would be a purpose supported by Islamic principles.

4- The presence of multiple heads for the various provinces is not a matter of strict Islamic decree. It is open for deliberations by jurists and the overriding consideration is to unite people rather than cause a rift.

5- The current state of international relations is based on treaties and conventions that promote peace and cooperation between nation states. This constitutes a departure from the traditional geographical divisions. As a result, the common meaning attributed to the terms *Land of Islam* and *Land of War* by jurists is no longer valid.

6- The current international system has been bound by international law which is based on the promotion of peace, security, the preservation of human rights and cooperation between nation states, the essential aim of which is to serve the interests of nations. Overall, these are noble ends and are not at variance with Islamic philosophy; in fact, they conform to and support it.

Chapter Five: The View towards the World and Evidence from the Qur’an and Sunnah

Conclusion:

1- Human relations in Islam are founded on the principle that all “humankind descend from Adam and Adam was created from dust”. The

First: Rulings the performance of which is subject to ability, such as the performance of Friday Prayers (in congregation) in the Hanafi School.

Second: Rulings the performance of which is subject to the likelihood of incurring harm due to the type of Land. Examples include: the prohibition of residing in a *Land of War*, travelling or taking the Quran thereto.

Third: Rulings that are exclusive to states such as sentences and punishments.

Fourth: Rulings that have been based on the notion that a *Land of War* is characterised by permissibility.

Fifth: Rulings that vary according to the type of Land.

Commentary on the aforementioned Rulings (Summary):

The first and second types of ruling are irrelevant to the issue of the type of Land. This is because the first is subject to ability, which is an issue that can occur in either type of Land. The second is subject to fear of harm, and that is the deciding factor. Thus, the type of Land is not the actual motivation in either case.

As for the third type of rulings, it is not a matter of what is permitted and what is not in a non-Muslim Land, because there is a consensus that sins remain so regardless of the type of Land. The issue relates to the abandonment of executing punishment, because that is a matter exercised by a ruling authority, and the authority is not Islamic in a *Land of War*.

The fourth type contends the most significant difference in rulings due to the type of Land. However, it is necessary to restrict discussion of differences here to the jurists' own extent. When we do so, we find that matters which were seen as permitted –due to type of Land– become prohibited with the commencement of an agreement. Consequently, those contrasting opinions converge in the case where an agreement between states has been made. Differences, however, remain where no agreement between states exists.

The fifth type is not substantiated with any evidence; the type of Land by itself provides no basis for divergence.

Having analysed the various Schools of Thought, this author has concluded that exaggerating the effect the type of Land has on Islamic rulings is unjustified.

2- Temporary Residents (who pledge to peacefulness): This is the case of a citizen of an Islamic state who enters a non-Muslim state by consent to reside in for a specific period.

Chapter 3: Rulings Pertaining to the Type of Land

The summary below of the areas of agreement and areas of disagreement will resolve the issues at hand.

Jurists have agreed on the following principles:

First: In essence, Muslims are commanded to abide by all Islamic obligations; no distinction is made based on the type of Land.

Second: Islamic ethics and values are equally valid in either type of Land; virtues that are encouraged –such as truthfulness, honesty and the keeping of promises- in a Muslim Land would be encouraged in a non-Muslim Land. Similarly immoral acts –such as lying, betrayal and treachery- are discouraged regardless of the type of Land.

Third: All rulings which do not require a judge to give a verdict on are obligatory in a *Land of War* just as they are in a *Land of Islam*. This is the expressed opinion of the Hanafis who are the principal advocates of differentiating rulings according to the type of Land. This means that all the following are not altered due to factors relating to the type of Land: Orders, such as performing prayers (including Friday Congregation and the two Eids), fasting, alms and pilgrimage; enjoining good and forbidding evil; engaging in business transactions (including all forms of trade); marriage and divorce. Likewise, prohibitions such as oppression, aggression, murder, fornication, theft, alcohol, and anything which does not require the judgment of an adjudicator are equally prohibited in either type of Land.

Fourth: An agreement between Muslims and their enemy assures security of life and wealth for both. Moreover, it gives equal sanctity to enemy lives and wealth as it affords Muslims.

Fifth: The sanctity of a woman's chastity (in a *Land of War* context) is assured whether states have an agreement or not. If an agreement has been made, then prohibition is absolute. If not, then no sexual contact can be made except if sanctioned by a legitimate Islamic authority.

Jurists have disagreed on the five following issues which relate to rulings:

Treaty of Peace:

A Treaty of Peace (also called Treaty of Truce) is a treaty entered into by Muslim rulers with the enemy declaring an armistice for a stated period with or without some form of compensation.

The interests of Islam and Muslims is the object in such an agreement, therefore, they do not have to be limited in time, according to the leading view.

The rules pertaining to peace treaties are patent in Islamic Law; it is incumbent upon both parties to keep the peace and abide by the treaty. Treacherous violation of treaties is prohibited in Islam. Muslims are not permitted to breach them unless, and only if, they fear violation by the enemy. Even then, notification must be given; because according to Islamic Law, treaties should be respected. The observance of treaties is strongly emphasised in Islam; it is prohibited to violate the lives, honour and wealth of those protected by an agreement.

11- The above clearly establishes what is meant by inhabitants of the state as follows:

First: In considering an Islamic state, inhabitants are divided into two categories: Citizens and Temporary Residents

1- Citizens: These are divided into:

A) Muslims; their citizenship is based on them being Muslims

B) Non-Muslims living in Muslim territory (Dhimmis): This category's citizenship is based on the Treaty of Permanent [Assurance of] Security.

2- Temporary Residents (who pledge to peacefulness): This is granted to non-Muslims entering an Islamic state for specific purposes and for a specific term. This would be an example of a Treaty of [Assurance of] Security.

Second: In considering non-Muslim states, Muslims can be one of two categories:

1- Citizens: those who belong to the country by absolute right, either due to it being their birthplace or due to being raised therein, and have decided not to emigrate to an Islamic state.

or not Muslims are sovereign with their religion as a result of the protection and security granted to them by the regime.

Where this is the case, a *Compound Land* could then be described as a *Land of Islam*.

9- The above is instructive for the purpose of determining the class of territory to which a non-Muslim state belongs if it grants Muslims their religious rights, does not persecute them, gives them protection, and allows them to observe Islamic practice; such a territory can be classed as a *Land of Islam*. If, in addition, a Muslim is permitted to invite others to Islam, and is granted rights equal to the rights of its native people, then its classification as a *Land of Islam* is further substantiated. To this end, opinions from some Shafi'i jurists, such as al-Mawardi, have expressed. This is also understood from Abu Hanifa's statements as well as some of his followers, and also Ibn Taymiyya.

10- The *Land of Treaty* (i.e. agreement, treaty and security)

Treaties are of two types according to Islamic jurisprudence; Treaties of [Assurance of] Security and Treaties of Peace^[1].

Treaties of [Assurance of] Security are divided into two further categories:

First: Permanent [Assurance of] Security, which is a citizenship agreement entered into by a Muslim government with non-Muslims living therein. It is traditionally known as the *Agreement of Dhimma*. And contrary to the submission of some jurists, such an agreement does not require –as an absolute condition- payment of the Jizya (Tax). This author has already argued his case in relation to the reasons for the stipulation of the Jizya. This type of agreement guarantees all the rights of citizenship for all individuals, Muslim and non Muslim, both in terms of rights and responsibilities, with the exception of certain religious provisions.

Second: Temporary [Assurance of] Security, which is a guarantee of protection limited in term and granted to non-Muslims wishing to enter Muslim territories. This is effectively equivalent to the “visas of entry”.

[1] Islamic tradition has the term ‘ahd which is conventionally translated as treaty. However, it must be noted that the “Treaty of [Assurance of] Security” is actually an “Agreement of [Assurance of] Security” because it is made between a state and individuals rather than between two states. The term “treaty” has only been retained for consistency.

where they are safe as a supporting factor for labelling this place a *Land of Islam*.

VI. Some jurists from the Maliki School limit the use of the term “*Land of War*” to the battlefield; in their view the term is associated with the absence of security. Hence, where security is realised, a territory can no longer be labelled “*Land of War*”; it would either be “*Land of Islam*” or “*Land of Disbelief*”.

4- In resolving the various Schools of Thought and jurists’ opinions and also taking into consideration actual contemporary reality, it is decided that labelling a territory (state) as Islamic or non-Islamic is subject to the notion of majority and primacy. In practical terms, this is determined by the primacy of political authority.

5- It is not disputed that a *Land of Disbelief* and a *Land of War* would become a *Land of Islam* by coming under the reign of Islam. This is consistent with the above principle. However, is it possible for a *Land of Islam* to become a *Land of Disbelief* or *Land of War*?

Using the above definition (of the primacy of political authority), a *Land of Islam* would become a *Land of War* or a *Land of Disbelief*. However, jurists have differed on this and there are six opinions; the following is the most compelling: a territory continues to carry the label Islamic, and this cannot be abolished without solid proof –since Islam forms its basis- as well as other instructive factors. Such factors include the affiliation of the majority to Islam, the continuation of visible Islamic practice such as Friday prayers, congregational prayers, the Call to Prayer, the observance of Eid festivities and the Fast of Ramadan etc.

6- If its people renounce Islam and *non-Islamic* rulings prevail, then this *Land (of Recantation)* becomes a *Land of War* or a *Land of Disbelief*.

7- The *Compound Land* is a term which jurists have used. In resolving its meaning it is decided that the term applies to territories in which Muslims have equal or broadly similar rights to non-Muslims in relation to the exercise of religion. In other words, the affairs of each group are governed on the basis of their own religion.

This point necessarily makes legitimate a different type of bond (between those of different religions); that of the nationhood.

8- The fact that the primacy of Islamic rulings is the determining factor in labelling a territory as Islamic demonstrates that the key issue is whether

force people to accept Islam, neither can it be begun to gain wealth or to acquire land.

IV. The condition for Jihad to be lawful is that the overall harm, if it occurs at all, should be less than the overall benefit. Thus, if the balance is in the favour of harm, then Jihad will not be permissible.

V. Founding the nature of relations between Muslims and others on the basis of war is incorrect. This is because relations should be based on delivering the message of Islam and demonstrating its kindness to people and its enormous benefit to nations.

Second Chapter: Muslim Jurists and Classifying the World

Conclusion:

1- Muslim jurists have taken considerable interest in the subject of classifying the world, in accordance with contemporary political affairs. Their notions on some concepts were not, however, uniform. But for the most part, differences have been merely semantic.

2- Overall, Muslim jurists agree in classifying the world into two or more types of territory.

3- Definitions used by jurists illustrate the following:

I. The various Muslim Schools of Thought agree that decrees -which correspond to the constitution in today's terminology-, are a condition for distinguishing the class of the Land.

II. The majority opinion –either explicitly mentioned or alluded to- has that the religion of the governing authority is crucial in determining the class of the Land.

III. The *Land of Islam* is any territory which is ruled on the basis of Islamic Law and the *Land of Disbelief* is to the opposite.

IV. The majority of jurists use the terms “*Land of War*” and “*Land of Disbelief*” interchangeably. But it is safe to say that labelling a “*Land of Disbelief*” as “*Land of War*” was dictated by reality, since those states were either at war with the Muslim state or war was foreseen.

V. In the opinion of Abu Hanifa -and this is also understood from some of his followers- and as is implied by some expressions from the Shafi'i School, we can take the application of Islamic rulings for Muslims in a place

or their family because of their faith. Conversely, residing in a non-Muslim society becomes discouraged -varying from undesirable (makruh) to forbidden (haram) - if one is able to *migrate* in order to end harm to his/her faith but does not do so.

iv. All evidence –authentic or not- which appears to be contrary to the above principle of *Hijra* is subject to the qualification above.

v. Lawful *Hijra* is not confined to those made on religious grounds but may be due to any one of four reasons: the preservation of faith, preservation of life, earning a living, and seeking knowledge. All these reasons come under the general title “the preservation of necessities”

6- Another rule that is important in distinguishing between various types of territory is *Jihad*. In this regard, this author has resolved the following issues:

I. It has been common among jurists to interpret *Jihad* as “fighting the enemy”. Fighting, in fact, is merely *one* method of *Jihad* and it has been referred to as *Jihad* figuratively; since the command of Jihad (linguistically, meaning to strive) in the Quran came before the command to fight. Jihad, in the early context, referred to either striving against the soul and desire, which is the greatest form of Jihad, or alternatively, to strive using the word. This latter usage referred to the command to demonstrate the truth and to encourage good and forbid evil.

Another form of Jihad is endeavouring towards establishing justice and preventing wrongdoing. Also part of Jihad is engaging in means that improve life and prevent corruption on earth.

It is also Jihad to sacrifice oneself and one’s wealth to protect right and prevent aggression by confronting oppressors in battlefields.

II. Fighting is not an end in itself; it is prescribed for the purpose of deterring aggression. In some cases fighting is the only option, and that is why Allah ordered it. Moreover, in the case where an individual’s harm and corruption cannot be prevented except by ending their life, then this becomes a necessary command.

III. Texts from the revelation command that Muslims fight against those who begin aggression and forbids the start of hostility. And where fighting occurs, Sharia texts set a limit on the extent of hostilities which is as soon as the enemy puts an end to their aggression. Fighting cannot be initiated to

state of affairs at the time. Hence, it was not an innovation by later Muslim jurists.

2- This classification was a mere description of the reality of the time; as dictated by the contemporary state of affairs, hence, it is not a religiously binding terminology. It was not an Islamic command nor was it a recommendation. Hence it is not a necessary Islamic concept.

3- As such, it is open to variation in accordance to the changing reality. Moreover, new terms, dictated by new developments, were found by subsequent scholars e.g. the *Compound Land*. This gives greater scope for reasoning in order to determine appropriate classifications.

4- The relevant expressions whose inception –during revelation- was influenced by the contemporary state of affairs and which were, henceforth, narrated are as follows: on the one hand there was the *Land of Islam*, the *Land of Migration* or the *Land of Migrants*; and on the other there was the *Land of Disbelief (Kufr)*, the *Land of Polytheism (Shirk)*, the *Land of the Enemy*. Also, owing to identifying territories by their inhabitants there was the *Nation of War* and the *Nation of Treaty*.

5- One of the most crucial rules which helps distinguish the class of a territory is the *Hijra* (Migration). In general, the use of the term *Hijra* in the Quran and the Sunnah means the migration from a territory of disbelief to Islamic territories; such was the early Muslim migration from Mecca (Land of Polytheism) to Medina (Land of Islam). *Hijra* also includes migration from a territory of fear and ordeal to territories of safety and stability (*Land of Justice*) even if it is not a *Land of Islam* as was the case when early Muslims migrated to Abyssinia.

In relation to this subject, this author has resolved the following issues:

i. The purpose of the sanctioning of *Hijra* was to enable Muslims to observe and protect their faith and that they should not be subject to persecution because of it.

ii. Some scholars have argued that *Hijra* -from the *Land of Disbelief* to the *Land of Islam*- is mandatory upon all those able. However, the aforementioned purpose of *Hijra* must be taken into account, hence, *Hijra* is not compulsory when one is able to preserve his religion and carry out its commands wherever that may be.

iii. Residing in a non-Muslim society is virtuous for those upholding justice, observing Islamic values, and avoiding potential harm to themselves

Conclusion

World Classification in Islamic Jurisprudence and its Relevance to Reality

This study discusses the Islamic view on the classification of the world. It will consider Islamic sacred text as well as the development of Islamic legislation over many centuries, during which international relations were based on animosity. The study will elucidate on the above and will further interpret the uses of the terms adopted by Muslim scholars. Finally, this essay will reflect on the relevance of those terms to today, bearing in mind the change in the nature of international relations and its associated concerns.

The primary aim of this research is to answer two fundamental questions: **First**, is the historic political classification of the world still valid? And what is its effect on the current reality? **Second**, to what extent can this classification affect Islamic legal rules?

This research was initially motivated by noting the profound impact this subject has on Europe. However, given that Europe forms merely an example of a broader international context, research was not confined in scope to Europe; it has set out the general case which would invariably include Europe and the entire West.

This study is made up of five chapters; each is followed by an appropriate conclusion.

First Chapter: Classification of the world

Conclusion:

1- Classifying the world into “*Land of Islam*” and “*Land of Disbelief (Kufr)*” is approved by the Sunnah and is supported by the historic events that took place during the time of Islamic revelation. It was a depiction of the

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